

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JULIA C. DUDLEY, CLERK
BY: ~~JULIA C. DUDLEY, CLERK~~
DEPUTY CLERK

RACHAEL L. COOK,)
Plaintiff,)
v.)
JOHN RICHARD BLAZER, et al.,)
Defendants.)
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)
Civil Action No. 7:15-cv-456
By: Michael F. Urbanski
Chief United States District Judge

ORDER

This matter is before the court on defendant Scott McQuate's motion to dismiss plaintiff's complaint and/or motion to transfer venue. ECF No. 82. This motion was referred to United States Magistrate Judge Robert S. Ballou for report and recommendation. On July 17, 2017, Judge Ballou issued a report and recommendation, recommending that McQuate's motion be denied. ECF No. 92. As to dismissal, Judge Ballou found that McQuate's first argument—that the court did not have personal jurisdiction over him—had already been raised in a previous motion to dismiss, which the court denied. Id. at 2; see ECF Nos. 13, 56. Thus, Judge Ballou found that "McQuate ha[d] raised no new arguments, and there [was] no need to revisit the issue." ECF No. 92, at 3. To the extent McQuate argued that dismissal was appropriate because he never received service of process, Judge Ballou found that argument to be "unfounded," given that McQuate presented no evidence or argument that would call into question the validity of the service made to the Secretary of the Commonwealth of Virginia as McQuate's statutory agent. Id. at 3.

Likewise, Judge Ballou rejected McQuate's arguments for transfer of venue, finding that the factors relevant to discretionary transfer—convenience of the parties and witnesses and the interests of justice—militated against transfer. Id. at 4. Moreover, McQuate has previously filed a motion under Rule 12, which was resolved by the court, thereby waiving any subsequent motion to transfer venue. Id. As such, Judge Ballou recommended that McQuate's motion to transfer be denied as well.

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, all parties were given fourteen days—until July 31, 2017—to file objections to the report and recommendation. Neither McQuate nor any other party chose to do so. It is well-settled that “[a]ny part of [a] magistrate judge’s disposition [on report and recommendation] that has not been properly objected to is reviewed for, at most, clear error.” Veney v. Astrue, 539 F. Supp. 2d 841, 844 (W.D. Va. 2008) (citing Fed. R. Civ. P. 72(b) advisory committee’s notes, and Thomas v. Arn, 474 U.S. 140, 149–52 (1985)). The court has reviewed Judge Ballou’s report and recommendation, and finds no clear error. Accordingly, the report and recommendation, ECF No. 92, is **ADOPTED** in full, and McQuate’s motion to dismiss plaintiff’s complaint and/or motion to transfer venue, ECF No. 82, is **DENIED**.

It is **SO ORDERED**.

Entered: *08-08-2017*

1st Michael F. Urbanski
Michael F. Urbanski
Chief United States District Judge